IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BEVERLY WILSON, Plaintiff,	§ § § §	
vs.	§	CIVIL ACTION NO. ____________
	§ §	JURY TRIAL DEMANDED
HUDSON PRODUCTS CORPORATION, Defendant.	§ § §	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, BEVERLY WILSON, Plaintiff herein, by and through her attorneys of record, hereby complains of **HUDSON PRODUCTS CORPORATION**, and for cause of action would respectfully show this Honorable Court the following:

Jurisdiction

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 2201 and 2202 and 29 U.S.C. §216(b). This is a suit in law and in equity, authorized and instituted pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, as amended ("ADEA"), and Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII"). Plaintiff's claims also arise under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"). In connection with the acts and course of conduct alleged in this Complaint, Plaintiff engaged in commerce. The Court's supplemental jurisdiction is invoked for the claims herein of violations of the Texas Commission on

Human Rights Act, Chapter 21 of the Texas Labor Code ("TCHRA"). The jurisdiction of this Court is invoked to secure the protection of Plaintiff and those individuals due to their age and gender, and to ensure proper payment of overtime wages.

Parties

2. The Plaintiff **Beverly Wilson** ("Wilson") is a resident of the County of Ft. Bend, State of Texas and at the pertinent times she was a resident of Ft. Bend County and a citizen of the United States.

3. The Defendant **Hudson Products Corporation** is an employer as defined by the ADEA at 29 U.S.C. § 630(b), Title VII at 42 U.S.C. §2000e(b) and the TCHRA at §21.002(8). Further, Defendant is an employer that engages in commerce and/or is an enterprise that is engaged in commerce and is therefore covered by the FLSA. Defendant is a Texas corporation and may be served with process through its registered agent for service of process at Corporation Service Company d/b/a CSC-Lawyers, Inc., 211 East 7th St., Suite 620, Austin, TX 78701.

4. At all times material hereto, Plaintiff was an employee, as contemplated within the ADEA at 29 U.S.C. § 630(f), Title VII at 42 U.S.C. §2000e(f), and the TCHRA at §21.002(7). At all times material hereto, Plaintiff is and was at least forty (40) years of age. Plaintiff's date of birth is March 29, 1960.

Venue

5. Venue is appropriate in this District pursuant to 28 U.S.C. §1391 in that the Plaintiff and Defendant reside in this Judicial District and/or a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District. Furthermore, the Defendant maintains sufficient business contacts in one or more counties comprising this Judicial District and the Houston Division.

Facts

6. Wilson's seniority with Defendant, including the predecessor company, dates back to 1991.

7. Wilson held the Human Resources Manager position for approximately 8 years until it was taken away from her in on or about May 27, 2014.

8. Wilson's most recent Employee Appraisal signed by her Manager in December 2013 states that she is "Highly Valued and…on a stable growth trend."

9. Wilson received a positive addendum to her 2013 evaluation in February 2014.

10. In March 2014, Wilson's supervisor was replaced by DeWayne Youngberg (General Counsel and Chief Compliance Officer). Wilson then reported to Mr. Youngberg.

11. Around the time that he became Wilson's supervisor, Mr. Youngberg made various comments about her age.

12. By way of example, upon information and belief, around March 2014, Mr. Youngberg commented that he wanted to replace Wilson, and that it would probably be with "someone younger."

13. By way of example, one comment was made by Mr. Youngberg on or about April 9, 2014, where he said that working through the pain "may be ok for young people, but not for someone (her) age."

14. By way of example, Mr. Youngberg made another comment on or about April 29, 2014 about Wilson and a co-worker being "two married old Women."

15. Upon information and belief, around April 2014, Defendant's Director of Operations, stated that Defendant needed "someone younger" in reference to a conversation about Wilson.

16. Soon after Mr. Youngberg became Wilson's supervisor, Miguel Quiroga was hired into the

department, and assumed Wilson's responsibilities of recruitment.

17. Upon information and belief, in May 2014, Defendant's Director of Operations stated that it was better to have a guy, in respect to Mr. Quiroga's hiring, because he gets along better with the guys.

18. Then, Defendant started stripping away most of Wilson's duties on or about May 27, 2014, giving most[1] of them to Mr. Quiroga and Edgar Lizama, and took away all of her supervisory responsibilities where she was made a benefits administrator, but told her title remained as Human Resources Manager.

19. Her direct reports and Wilson were also told around this time that they were to report to someone else.

20. Although Wilson was demoted to that of a Benefits Administrator, her exempt status was not changed to being non-exempt.

21. While Wilson was a non-exempt employee, she was paid a salary.

22. Because Wilson is a non-exempt employee, Defendant is required to pay her at one and one half times her regular rate of pay for those hours worked in excess of forty in a single workweek. 29 U.S.C. § 207(a).

23. However, Wilson has not been compensated for the hours worked in excess of forty hours per week at one and one half times her regular rate of pay during such time that she was non-exempt.

24. Rather than being paid at the statutorily required time and one half for each hour worked in excess of forty in a workweek, Wilson was only paid her salary for all hours worked.

25. Mr. Quiroga, and Mr. Lizama, in addition to being Men, are substantially younger than

1 Some hourly employee HR duties were assumed by Mauricio Yanes, who is also younger than Plaintiff.

Wilson.

26. In or around July 2014, during open enrollment for insurance, Mr. Youngberg approved and was present for the statement made to management that Defendant was going to make an effort to hire younger people because the health insurance benefits premiums were getting higher due to its aging workforce.

27. Ultimately, Mr. Quiroga formally replaced Wilson as the HR Manager in late August 2014.

28. Defendant terminated Wilson on or about August 27, 2014.

29. It is also no coincidence that Defendant either terminated, in addition to Wilson, or asked older employees to resign resulting in approximately five (5) or more older employees separating from Defendant.

30. Upon information and belief, one of Defendant's Vice Presidents had made a number of ageist comments, including but not limited to wanting to get the "old guys out of here" and to "get fresh young faces." He also said that some of the employees have been there "too long," that they are "too old," and that you "can't teach an old dog new tricks."

31. Upon information and belief, Defendant's Director of Operations, stated that one of the older employees, does not get it because he is "too old" and that he would find someone younger.

32. Upon information and belief, one of Defendant's Vice Presidents and its Director of Operations commented about a few older employees in their 60s who were "too old" and that they needed to "get rid of [him] and get someone younger."

Causes of Action

Age and Gender Discrimination

33. Plaintiff hereby incorporates all facts stated in the aforementioned paragraphs, as if set forth

fully herein.

34. Defendant has intentionally discriminated against Plaintiff by subjecting her to disparate treatment and disparate terms and conditions of employment because of her age and/or gender, stripping her responsibilities and demoting her, and terminating her, all in violation of the ADEA, Title VII and TCHRA. As a result, Plaintiff is entitled to actual damages based on such conduct.

35. Plaintiff has suffered and continues to suffer mental anguish, humiliation, and emotional distress, all to her detriment and compensable at law under Title VII and the TCHRA.

36. Your Plaintiff would show that Defendant and its agents and employees, by their actions, statements, practices, and policies, maliciously and/or with reckless indifference discriminated against Plaintiff on account of her age and/or gender. As a result, Plaintiff is entitled to punitive damages under Title VII and the TCHRA.

37. Defendant through its agents and employees, by their actions, statements, practices, and policies willfully violated the ADEA. As a result, Plaintiff is entitled to liquidated damages under the ADEA.

38. Plaintiff has fully complied with the provisions of the ADEA, Title VII, and TCHRA.

39. Plaintiff filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC").

40. All jurisdictional prerequisites and conditions precedent necessary to the maintenance of the instant action have been fulfilled.

41. Charges filed with the EEOC are considered to be filed with the Texas Workforce Commission Civil Rights Division pursuant to a worksharing agreement between the two agencies.

42. Plaintiff has requested a "Right to Sue" letter from the EEOC and a "Notice of Right to File Civil Action" from the Texas Workforce Commission Civil Rights Division.

43. Plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and this suit for preliminary and permanent injunction is the only available means of securing adequate relief. Plaintiff presently suffers and will continue to suffer irreparable injuries from Defendant's policies, practices, customs, and usages set forth herein.

44. The effect, purpose and intent of the policies and practices pursued by Defendant has been and continues to be to limit, classify, and intentionally and wilfully discriminate against Plaintiff in violation of her rights and the rights of other older and Female employees and otherwise adversely effecting their status as employees because of their age and/or gender in violation of the ADEA, Title VII and TCHRA.

Fair Labor Standards Act

45. Plaintiff hereby incorporates all facts stated in the aforementioned paragraphs, as if set forth fully herein.

46. Defendant’s practice of failing to pay overtime compensation at one and one half the Plaintiff’s regular rate of pay for all work in excess of forty (40) hours in a workweek was and is in violation of the FLSA. 29 U.S.C. § 207.

47. Defendant’s conduct was willful.

48. Plaintiff is entitled to overtime pay in an amount which is one and one half times her rate of pay for the time period dating back three years from the date of filing this action.

49. Additionally, Plaintiff is entitled to an amount equal to all her unpaid wages as liquidated damages, as well as reasonable attorneys’ fees and costs of this action. 29 U.S.C. 216(b).

WHEREFORE, Plaintiff prays that this court advance this cause on the docket, order a speedy hearing at the earliest practicable date and cause this case in every way to be expedited and upon such hearing to:

i. Grant Plaintiff a preliminary and permanent injunction enjoining Defendant and its agents and employees from continuing to discriminate against Plaintiff and other similarly situated persons or otherwise deprive Plaintiff of her rights and privileges secured by Federal and State Law;

ii. Grant Plaintiff a declaratory judgment, that the practices, policies, customs and usages complained of herein are violative of her rights as protected by The Age Discrimination in Employment Act, Title VII, FLSA, and Texas Commission on Human Rights Act;

iii. Order the Defendant to grant Plaintiff additional equitable relief, requiring said Defendant to engage in any affirmative action as is authorized by statute and deemed necessary to remedy the discrimination alleged herein;

iv. Enter a monetary judgment, including actual, compensatory and punitive damages, on Plaintiff's behalf against Defendant pursuant to Title VII and the TCHRA.

v. Enter a monetary judgment, including actual damages, on Plaintiff's behalf against Defendant pursuant to the ADEA;

vi. Enter an award against Defendant for double liquidated damages under the ADEA.

vii. Enter an award against Defendant for back pay; including all accrued interest, insurance benefits, pension benefits, vacation benefits, sick leave, and other incidental benefits that attach to and were incidental to Plaintiff's employment with Defendant;

viii. Enter an award for overtime wages for all underpaid and/or unpaid hours worked in excess of 40 hours in a workweek at the rate of one and one half times her regular rate of pay;

ix. Enter an award for an equal additional amount as liquidated damages as allowed under the FLSA;

x. Enter an order compelling Defendant to reinstate Plaintiff, or enter an order awarding front pay to the Plaintiff in lieu of reinstatement; and

xi. Enter an order granting such further relief to which Plaintiff may show herself justly entitled consistent with the purposes of the ADEA, Title VII, FLSA, and TCHRA, including attorneys fees, costs, and pre and post-judgment interest.

Respectfully submitted,

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